IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.15 OF 2004

Subhash Anant Hirave .. Appellant

Versus

Vijay Dattatraya Phalle .. Respondent

Mr.Vishwanath Talkute, advocate for appellant
Mr.H.S.Venegavkar, advocate for Respondent

CORAM : P.V.KAKADE, J.
DATE : 6TH JUNE, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by the Additional District Judge, Karad, Dist. Satara dated 29th

November, 2003 dismissing the appellant's appeal and confirming the judgment and order passed by the lower court dated 31st October, 1995 decreeing the plaintiff/respodnent's suit for possession and other reliefs.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The facts involved are that the plaintiff is the owner of the suit property and had leased out the suit property to the defendant for the purpose of business and residence by way of registered lease deed executed on 30th June 1993. The lease deed was for fixed period of ten years. The rent was to be paid at the rate of Rs.200/= per month for the period of five years and thereafter at the rate of Rs.225/- per month for the remaining period of five years. There was a clause in the lease deed to the effect that if the rent was not paid as agreed the lessor would have right to reentry. The defendant committed breach of terms of registered lease deed, as a result of which the suit came to be filed for possession of the premises and other reliefs.

4. The appellant-defenadnt resisted the suit on various grounds. It was heard on merits and the learned trial judge concluded that the plaintiff was entitled to a decree of possession and other reliefs claimed and accordingly decreed the suit. The appeal was carried to the District Court. On hearing both the parties the lower appellate court came to the conclusion that the findings recorded by the learned trial judge were just, legal and proper. The issue of legality of the notice of termination of lease deed was also considered by the learned lower appellate court, who came to the conclusion that the notice was legal and proper and therefore the appeal came to be dismissed. Hence the present appeal.

5. The only substantial question of law is sought to be raised in this appeal is in respect of legality of notice of termination of lease deed. The learned counsel for the appellant vehemently urged that the lease commenced on first day of month and therefore, the notice terminating the tenancy of the defendant was dated 10th June, 1991 vide Exh.50. The plaintiff had called upon the defendant to pay the rent from March 1991 to May 1991 and tenancy came to be terminated by

the end of 30th June, 1991 and sought vacation of the suit premises on 1st July, 1991. The legality of the notice was assailed on the ground that by virtue of provision of Section 110 of the Transfer of Property Act one more day was required to be excluded while terminating the lease deed, which has not been done, and therefore, the notice is bad in law. In support of this argument the learned advocate for the appellant relied upon the ruling of Privy Council in the case of **Benoy Krishna Das vs. Salsiccioni** reported in **A.I.R. 1932 Privy Council 279**. In that case it was held that by virtue of Section 110 of the Transfer of Property Act one day was required to be excluded in case where the time limited by a lease of immovable property was expressed as commencing from a particular day. In fact there cannot be two opinion with the view expressed by the Privy Council in the said ruling. However, the moot question involved here is whether the lease deed had or not expressly provided the date of commencement of the lease itself. The copy of the suit lease deed is at page 49. Plain perusal thereof is sufficient to show that it is conspicuous by silence of date of commencement of lease. If it is so, in my considered view, the provision of Section 110 of the Transfer of

Property Act shall not be applicable to the present dispute, as there is no specific date of commencement of the lease. It was sought to be submitted that the learned lower appellate court judge had made certain observations holding that the lease commenced from a particular date. However, in order to determine this purely legal aspect, this court need not and should not rely upon the observations made by the lower appellate court and has to peruse the document of lease itself, which as noted earlier, is silent on recording the commencement of the date.

6. Once this position is clear, there is no doubt whatsoever, that the appeal is not tenable at all. Perusal of the entire record shows that both the courts below have recorded concurrent findings, which are found to be just, legal and proper, based on proper appreciation of evidence and therefore, would brook no interference.

7. At this stage the learned counsel for the appellant sought indulgence from this Court regarding time to vacate the suit premises. Having considered all relevant aspect, therefore, I am inclined to grant some

time to the appellant to vacate the suit premises, especially when it is residential-cum-business premises.

8. Hence the appeal stands dismissed with no order as to costs. The appellant shall vacate the entire suit premises on or before 1st December, 2005 on furnishing Undertaking to this Court within four weeks from today to that effect. He shall continue to pay the rent at the agreed rate during the said period.

9. Consequently the civil application also stands dismissed with no order as to costs.

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